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Patterson Thuente Skaar & Christensen  
4800 IDS Center  
80 South, 8<sup>th</sup> Street  
Minneapolis, MN 55402-2100

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**JAN 07 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Okamoto, Shinken :  
Application No. 09/360,025 :  
Filed: July 23, 1999 :  
Attorney Docket No. 2418.05US01 :

**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed October 31, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1).

As to item (1), The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of December 11, 2002. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that prima facie places the application in condition for allowance, or the filing of a continuing application. See MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not prima facie place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee) or the filing of a continuing application. Alternatively, the reply requirement may be met by the filing of a submission under 37 CFR 1.129(a) if the above-identified application is eligible for such transitional practice.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$475 extension of time submitted with the petition on October 31, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop Petitions  
                                    PO Box 1450  
                                    Alexandria, VA 22313-1450

By facsimile:                (703) 872-6906  
                                    Attn: Office of Petitions

By hand:                     Customer Service Window  
                                    2011 South Clark Place  
                                    Crystal Plaza 2, Room 1B03  
                                    Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.



Latrice Bond  
Paralegal Specialist  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Attachment: Advisory Action